

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Satoshi TANGE et al.
Title: SYSTEM AND METHOD FOR PREVENTING LANE
DEVIATION OF VEHICLE
Appl. No.: 10/713,354
Filing Date: 11/17/2003
Patent No.: 7,433,769
Grant Date: 10/07/2008
Examiner: Christine M BEHNCKE
Art Unit: 3661
Confirmation Number: 3155

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 10/07/2008 as U.S. Patent No. 7,433,769.

The Patent Office determined that the patent was entitled to 537 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office’s interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008).

The court determined that, under the correct interpretation of the PTA statute, periods of “overlap” are limited to “periods of time . . . [that] occur on the same day.” *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays “occur on the same day.” *Id.*

Applicants have recalculated PTA for the captioned patent under the court’s interpretation of the PTA statute, and have determined that the patent is entitled to 1051 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1204 days
(b) Total Applicant delay:	153 days
Final PTA Determination:	1051 days

Applicants therefore respectfully request that the patent be accorded 1051 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date November 7, 2008

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By



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Patent Term Adjustment Calculation System

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Docket Number: 023971-0341

Application Number: 10/713354

Patent Number: 7433769

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	11/17/2003	0		
	14 month From Application date	01/17/2005	427		
Edit Delete	Non-Final Office Action	06/15/2006	941	514	
	Non-Final Office Action + 3 months	09/15/2006	1,033		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/15/2006	1,094		61
	3 Year Period Starts	11/17/2006	1,096		
Edit Delete	Non-Final Office Action	02/06/2007	1,177		
	Non-Final Office Action + 3 months	05/06/2007	1,266		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	07/06/2007	1,327		61
Edit Delete	Non-Final Office Action	10/19/2007	1,432		
	Non-Final Office Action + 3 months	01/19/2008	1,524		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	02/19/2008	1,555		31
Edit Delete	Notice of Allowance	06/04/2008	1,661		
Edit Delete	Issue Fee Paid	08/28/2008	1,746		
Edit Delete	Patent Grant Date	10/07/2008	1,786	690	
			Totals:	1,204	153
			PTA:	1,051	

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